

§ 148.708 Must the applicant's proposal reflect potential regulations?

Although a regulation is of no effect until it has been officially promulgated, to minimize the subsequent impact that potential regulations may have on a licensee, an applicant can and should reflect reasonably foreseeable environmental regulations in planning, operating, and decommissioning a deepwater port.

§ 148.709 How are these criteria reviewed and revised?

The Commandant (G-M) periodically reviews and may revise these criteria. Reviews and revisions are conducted in accordance with 148.700 of this subpart. The criteria established are consistent with the National Environmental Policy Act (42 U.S.C. 4321-4347).

§ 148.710 What environmental conditions must be satisfied?

(a) MARAD may issue a license to construct a deepwater port under the Act, with or without conditions, if certain specified conditions are met. The relevant environmental considerations include, but are not limited to the following:

(1) Construction and operation of the deepwater port will be in the national interest and consistent with national security and other national policy goals and objectives, including energy sufficiency, environmental quality, and protection from the threat of terrorist attack and other subversive activity against persons and property on the port and the vessels and crews calling at the port; and

(2) Under the environmental review criteria in § 148.707 of this subpart, the applicant has demonstrated that the deepwater port will be fabricated, constructed, operated, and decommissioned using the best available technology to prevent or minimize adverse impact on the environment (33 U.S.C. 1503(c)(3) and 1504).

(b) Under 33 U.S.C. 1504(f), these criteria must be considered in the preparation of a single, detailed environmental impact statement or environmental assessment for all timely applications covering a single application area. Additionally, 33 U.S.C. 1504(i)(3) specifies that, if more than one appli-

cation is submitted for an "application area" (as defined in 33 U.S.C. 1504(d)(2)), the criteria must be used, among other factors, in determining whether any one proposed deepwater port clearly best serves the national interest.

§ 148.715 How is an environmental review conducted?

The environmental review of a proposed deepwater port and reasonable alternatives consists of Federal, tribal, state, and public review of the following two parts:

(a) An evaluation of the proposal's completeness of environmental information and quality of assessment, probable environmental impacts, and identification of procedures or technology that might prevent or minimize probable adverse environmental impacts; and

(b) An evaluation of the effort made under the proposal to prevent or minimize its probable environmental impacts. This evaluation will assess the applicant's consideration of the criteria in §§ 148.720 through 148.740 of this subpart.

§ 148.720 What are the siting criteria?

In accordance with § 148.715(b), the proposed and alternative sites for the deepwater port will be evaluated on the basis of how well each:

(a) Optimizes location to prevent or minimize detrimental environmental effects;

(b) Minimizes the space needed for safe and efficient operation;

(c) Locates offshore components in areas with stable sea-bottom characteristics;

(d) Locates onshore components where stable foundations can be developed;

(e) Minimizes the potential for interference with its safe operation from existing offshore structures and activities;

(f) Minimizes the danger posed to safe navigation by surrounding water depths and currents;

(g) Avoids extensive dredging or removal of natural obstacles such as reefs;

(h) Minimizes the danger to the port, its components, and tankers calling at

the port from storms, earthquakes, or other natural hazards;

(i) Maximizes the permitted use of existing work areas, facilities, and access routes;

(j) Minimizes the environmental impact of temporary work areas, facilities, and access routes;

(k) Maximizes the distance between the port and its components and critical habitats including commercial and sport fisheries, threatened or endangered species habitats, wetlands, floodplains, coastal resources, marine management areas, and essential fish habitats;

(l) Minimizes the displacement of existing or potential mining, oil or gas production or transportation uses;

(m) Takes advantage of areas already allocated for similar use, without overusing such areas;

(n) Avoids permanent interference with natural processes or features that are important to natural currents and wave patterns; and

(o) Avoids dredging in areas where sediments contain high levels of heavy metals, biocides, oil or other pollutants or hazardous materials and in areas designated wetlands or other protected coastal resources.

§ 148.722 Should the construction plan incorporate best available technology and recommended industry practices?

Each applicant must submit a proposed construction plan. It must incorporate best available technology and recommended industry practices as directed in 148.730.

§ 148.725 What are the design, construction and operational criteria?

In accordance with 148.720(b), the deepwater port proposal and reasonable alternatives will be evaluated on the basis of how well they:

(a) Reflect the use of best available technology in design, construction procedures, operations, and decommissioning;

(b) Include safeguards, backup systems, procedures, and response plans to minimize the possibility and consequences of pollution incidents such as spills and discharges, while permitting safe operation with appropriate safety margins under maximum oper-

ating loads and the most adverse operating conditions;

(c) Provide for safe, legal, and environmentally sound waste disposal, resource recovery, affected area reclamation, and enhanced use of spoil and waste;

(d) Avoid permanent interference with natural processes or features that are important to natural currents and wave patterns;

(e) Avoid groundwater drawdown or saltwater intrusion, and minimizes mixing salt, fresh, and brackish waters;

(f) Avoid disrupting natural sheet flow, water flow, and drainage patterns or systems;

(g) Avoid interference with biotic populations, especially breeding habitats or migration routes;

(h) Maximize use of existing facilities;

(i) Provide personnel trained in oil spill prevention at critical locations identified in the accident analysis;

(j) Provide personnel trained in oil spill mitigation; and

(k) Plan for safe and effective removal of the deepwater port in the event of its decommissioning.

§ 148.730 What are the land use and coastal zone management criteria?

In accordance with § 148.715(b), the deepwater port proposal and reasonable alternatives will be evaluated on the basis of how well they:

(a) Accord with existing and planned land use, including management of the coastal region, for which purpose the proposal must be accompanied by a consistency determination from appropriate state agencies;

(b) Adhere to proposed local and State master plans;

(c) Minimize the need for special exceptions, zoning variances, or non-conforming uses;

(d) Plan floodplain uses in ways that will minimize wetlands loss, flood damage, the need for Federally-funded flood protection or flood relief, or any decrease in the public value of the floodplain as an environmental resource; and

(e) Avoid permanent alteration or harm to wetlands and take positive steps to minimize adverse effects on wetlands.